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ONG SIEW GIEK

v.

INTERNATIONAL FOOTWEAR (PG) SDN BHD

b

HIGH COURT MALAYA, PULAU PINANG

RK NATHAN J

[CIVIL APPEAL NO: 16-8-2002]

1 SEPTEMBER 2004

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LABOUR LAW: *Employment - Termination benefits - Whether a Senior Supervisor a manual worker under s. 2(1) of the Employment Act 1955 - 'Throughout the performance of their work', definition of - Whether restrictive interpretation called for - Whether 'supervisor' falls within s. 2(3) of the First Schedule to the Employment Act 1955*

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The appellant's claim for termination benefits was dismissed by the *Labour Court* on the basis that she did not fall within the category of a manual worker as defined under s. 2(1) of the Employment Act 1955 ('the Act'). The appellant was a senior supervisor with the respondent. Her work included supervising and teaching manual workers, approving their leave, repairing the machines when it could not function, helping out during emergencies and even attending meetings. Thus argued the respondent, because of such various jobs performed by her, she could not be said to be engaged throughout the performance of the employees' work. The Labour Court also held that the appellant had to show that she was supervising and overseeing other employees throughout the performance of their work. The appellant thus appealed

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Held (allowing the appeal with costs):

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[1] So long as the supervisor takes responsibility for the act of his assistant supervisors down the line and so long as he performs for the benefit of the workers, he must fall within s. 2(3) of the First Schedule to the Employment Act 1955. His approval of the workers' leave cannot be seen as being outside the supervisory job. The words 'in and throughout the performance of their work' cannot be restricted to refer only to work performance. The supervisor is also entitled to see that the leave applied for by the manual worker does not fall during the time when the worker is needed most, and the supervisor must therefore be in a position to approve or disapprove of an applicant's leave. This cannot be said to not fall within s. 2(3) of the First Schedule to the Act. It also cannot be said that by attending meetings for the benefit of the workers, he has no supervision over the workers. (pp 471 g-h & 472 a-c)

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Case(s) referred to:

Colgate Palmolive (M) Sdn Bhd v. Cheong Foo Weng & Ors [2002] 2 AMR 2107 HC (refd)

Legislation referred to:

Employment Act 1955, s. 2(1), (3)

For the appellant/plaintiff - Siva Subramanim; M/s Subramanim Shanmugam & Co
For the respondent/defendant - Pravin Kaur Jessy; M/s Jessy & Assocs

Reported by Andrew Christopher Simon

JUDGMENT

RK Nathan J:

Facts

This is a claim by the complainant for termination benefits amounting to RM24,864 for being employed by the defendant/respondent for 27 years. At the commencement of this appeal parties informed the court that there is no dispute as to the sum.

Findings Of The Court

The labour court dismissed the complainant's claim on the basis that she did not fall within the category of a manual worker as defined under s. 2(1) of the Employment Act 1955 (the Act). When she was terminated she was employed as a supervisor with a monthly salary of RM1,950.

Counsel for the complainant argued that by virtue of her position as a senior production supervisor, the labour court did not have the jurisdiction to hear the matter under s. 69(1) of the Act.

The complainant filed her case under s. 69(1)(a) of the Act but the presiding officer found that the case was under s. 69B(1) of the Act.

Section 69(1)(a) of the Act reads as follows:

(1) The Director General may inquire into and decide any dispute between an employee and his employer in respect of wages or any other payments in cash due to such employee under:

(a) any term of the contract of service between such employee and his employer;

a Section 69B(1) of the Act reads as follows:

- (1) Notwithstanding the provisions of this Act, the powers of the Director General under 69(1)(a) shall extend to employees whose wages per month exceed 1,500 ringgit but does not exceed 5,000 ringgit.

b It would seem that there is no dispute as to which section the case fell under since the complainant's last drawn salary was indeed RM1,900 per month. However the presiding officer decided that the complainant was not a manual worker under s. 2(1) of the First Schedule to the Act. The said section reads as follows:

c 2. Any person who, irrespective of the amount of wages he earns in a month, has entered into a contract of service with an employer in pursuance of which:

- (1) he is engaged in manual labour including such labour as an artisan or apprentice:

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Provided that where a person is employed by one employer partly in manual labour and partly in some other capacity such person shall not be deemed to be performing manual labour unless the time during which he is required to perform manual labour in any one wage period exceeds one-half of the total time during which he is required to work in such wage period;

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The presiding officer also held that the complainant did not fall under s. 2(3) of the First Schedule to the Act. The said sub section reads as follows:

- (3) He supervises or oversees other employees engaged in manual labour employed by the same employer in and throughout the performance of their work.

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She thus concluded because of the operative words "throughout the performance of their work". Holding that the complainant was a senior supervisor at the respondent's company, the presiding officer held that to fall under s. 2(3), the complainant must show that she was supervising and was overseeing other employees engaged in manual labour, throughout the performance of their work.

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Counsel for the respondent pointed out that the complainant cannot fall under s. 2(3) because admittedly from her own evidence it was clear that she had one assistant supervisor, two line leaders and an operator under her. In other words she was at the top of the chain of command so to speak.

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Besides she also admitted that other than supervising and at times teaching the manual workers, she also had to approve their leave. When the machine could not function she would repair it. She helped out during emergencies. At times she even attended meetings. It was argued by the respondent that because of these various jobs performed by her, she could not be said to be engaged throughout the performance of their work.

I am aware of the decision of the High Court in *Colgate Palmolive (M) Sdn Bhd v. Cheong Foo Weng & Ors* [2002] 2 AMR 2107 where the court at p. 2138 gave a strict interpretation to the words “supervises ... employees ... throughout the performance of their works”. The court held that the supervisor “must be physically present at all times when the work is done.”

I do not think that such a restrictive interpretation ought to be given. If that be the case the supervisor cannot even strictly speaking attend to the call of nature. He must be physically present at all times.

In any case when asked during cross-examination whether the supervisor “beri arahan setiap hari”, the complainant’s answer was “setelah supervisor beritahu tentang kerja dia tidak lagi beri arahan tetapi dia berada di situ setiap hari. Supervisor juga buat planning”. In other words she confirmed that the supervisor would be there supervising everyday and there was no further challenge on this by the respondent’s solicitors.

It must be remembered that the Act was passed in 1955 when the worker population was more manual-labour orientated, and needed constant supervision. Machines were also such that only a supervisor could attend when it broke down, so that his constant and vigilant attendance was necessary to keep the machines running and productivity continuous. It was with this in mind that there was a need to ensure continuous and constant supervision. Today machines are more sophisticated and supervisors have assistants to help them to relieve them of their workload. It must also be remembered that production today is many times more than what it was in the 50’s. If one supervisor is to manage alone, he would be more of a liability to the company than when he is assisted by others in the supervision. It is therefore my judgment that so long as the supervisor takes responsibility for the act of his assistant supervisors down the line and so long as he performs for the benefit of the workers, he must fall within s. 2(3) of the Act. I cannot see his approval of the workers leave as being outside the supervisory job. I agree that that supervision is unrelated to the supervision of the worker at the job. To my

- a* mind the words “in and throughout the performance of their work” cannot be restricted to refer only to the work performance. Surely the supervisor is also entitled to see that the leave applied for by the manual worker does not fall during the time when the worker is needed most. The company might have to boost production during emergencies and the supervisor must be in a position to approve or disapprove of an applicant’s leave. Surely it cannot be said that this does not fall within the act envisaged in s. 2(3) of the first schedule to the Act.

- c* He might need to attend meetings for the benefit of the workers and at such times his assistant will stand in for him. Surely because of this it cannot be said that he has no supervision over the workers. He is after all, the person, over all in charge.

- d* Law must develop and move with the times. It cannot be static nor immutable. The complainant had said under cross-examination that once instructions are given daily there was no need to give further instructions. However in any event the supervisor would be present daily. Taking this evidence with the fact that the company itself had approved and allowed the complainant to do other related work for its own benefit, and knowing that there were assistant supervisors down the line, it is unacceptable for the respondent company to deny that the complainant fell within s. 2(3) to the first schedule to the Act.
- e* I therefore allowed the appeal with costs.
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